

UNITED STATES DISTRICT COURT
DISTRICT OF PUERTO RICO

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In re: PROMESA
Title III

THE FINANCIAL OVERSIGHT AND
MANAGEMENT BOARD FOR PUERTO RICO,

as representative of No. 17 BK 3283-LTS

THE COMMONWEALTH OF PUERTO RICO, *et al.*, (Jointly Administered)
Debtors.¹

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NOTICE OF AGENDA OF MATTERS
SCHEDULED FOR THE CONFIRMATION
HEARING ON NOVEMBER 17, 2021 AT 9:30 A.M. AST

Time and Date of Hearing: Wednesday, November 17, 2021, at 9:30 A.M. AST

Honorable Laura Taylor Swain, United States District Judge
Honorable Judith G. Dein, United States Magistrate Judge

Location of Hearing: The Hearing will be conducted virtually via videoconferencing and telephonic platforms.

Attorney Participation: Pursuant to the *Second Amended Order Regarding Procedures for Hearing on Confirmation of Plan of Adjustment* [Case No. 17-3283, ECF No. 19012-1] (the “Procedures Order”), attorneys who have entered an appearance in the Title III cases and wish to participate as speakers in the proceedings must file a Pretrial Informative Motion in accordance with paragraph 4(a) of the Procedures Order and, upon receipt of an invitation to register their appearance from the Court, must respond to the invitation to register for Zoom access. The FOMB and AAFAF may each have four

¹ The Debtors in these Title III Cases, along with each Debtor’s respective Title III case number and the last four (4) digits of each Debtor’s federal tax identification number, as applicable, are the (i) Commonwealth of Puerto Rico (“Commonwealth”) (Bankruptcy Case No. 17-BK-3283-LTS) (Last Four Digits of Federal Tax ID: 3481); (ii) Puerto Rico Sales Tax Financing Corporation (“COFINA”) (Bankruptcy Case No. 17-BK-3284-LTS) (Last Four Digits of Federal Tax ID: 8474); (iii) Puerto Rico Highways and Transportation Authority (“HTA”) (Bankruptcy Case No. 17-BK-3567-LTS) (Last Four Digits of Federal Tax ID: 3808); (iv) Employees Retirement System of the Government of the Commonwealth of Puerto Rico (“ERS”) (Bankruptcy Case No. 17-BK-3566-LTS) (Last Four Digits of Federal Tax ID: 9686); (v) Puerto Rico Electric Power Authority (“PREPA”) (Bankruptcy Case No. 17-BK-4780-LTS) (Last Four Digits of Federal Tax ID: 3747); and (vi) Puerto Rico Public Buildings Authority (“PBA”) (Bankruptcy Case No. 19-BK-5523-LTS) (Last Four Digits of Federal Tax ID: 3801) (Title III case numbers are listed as Bankruptcy Case numbers due to software limitations).

attorneys appear on Zoom at any given time, and all other parties shall be limited to two attorney appearances at any given time.

Attorneys, Members of the Public and Press: Attorneys and members of the public and press **may listen to (but not view or participate in)** the proceedings by dialing (877) 336-4441 and entering the access code (2140522) and security code (6335) when prompted.

Copies of Documents: Copies of all documents filed in these Title III cases are available free of charge (a) by visiting <https://cases.primeclerk.com/puertorico> or by calling +1 (844) 822-9231, and (b) on the Court's website at <http://www.prd.uscourts.gov>, subject to the procedures and fees set forth therein.

I. ORAL ARGUMENT:

1. **The Oversight Board's Request for Rulings Regarding Act 53-2021.** Urgent Motion of the Financial Oversight and Management Board for Puerto Rico for Order (I) Approving Form of Notice of Rulings the Oversight Board Requests at Confirmation Hearing Regarding Act 53-2021 and (II) Scheduling Objection Deadline [**Case No. 17-3283, ECF No. 19002**]

Description: The parties will address the Oversight Board's request for rulings regarding Act 53-2021 and objections thereto.

Objection Deadline: November 12, 2021 at 5:00 p.m. (Atlantic Standard Time).

Responses:

- A. Objection of APJ to Plan Pursant [sic] to Court Order of November 2, 2021 at Docket No. 19017 [**Case No. 17-3283, ECF No. 19161**]
- B. Objection of the "Asociación de Jubilados de la Judicatura de Puerto Rico" ("AJJPR") and Hon. Hector Urgell Cuebas, Former Judge of the Puerto Rico Court of Appeals and Participant of the Judicial Retirement System in Relation to Notice of (I) Rulings the Oversight Board Request at Confirmation Hearings Regarding Act 53-2021 and (II) Deadline for Objection [**Case No. 17-3283, ECF No. 19175**]
- C. Objection to Urgent Motion of the Financial Oversight and Management Board for Puerto Rico for Order (I) Approving Form of Notice of Rulings the Oversight Board Requests at Confirmation Hearing Regarding Act 53-2021 at Docket No. 19002 and Request to Be Heard, filed by Federación de Maestros de Puerto Rico, Inc., Grupo Magisterial Educadores(as) por la Democracia, Unidad, Cambio, Militancia y Organización Sindical, Inc., and Unión Nacional de Educadores y Trabajadores de la Educación, Inc., (collectively as "Teacher's Associations") [**Case No. 17-3283, ECF No. 19180**]

- D. Objection of Asociación de Maestros de Puerto Rico and Asociación de Maestros de Puerto Rico-Local Sindical to the Oversight Board's Proposed Rulings at Confirmation Hearing Regarding Act 53-2021 (Docket No. 19002) [**Case No. 17-3283, ECF No. 19181**]
- E. Objection, filed by Maria A. Clemente Rosa, *pro se* [**Case No. 17-3283, ECF No. 19254**]

Reply and Joinder Deadline: November 15, 2021, 11:59 p.m. (Atlantic Standard Time).

Reply:

- A. Omnibus Reply of the Commonwealth of Puerto Rico, the Employees Retirement System of the Government of the Commonwealth of Puerto Rico, and the Puerto Rico Public Buildings Authority to Objections to Requested Rulings Regarding Act 53-2021 Relating to the Modified Eighth Amended Joint Plan Of Adjustment [**Case No. 17-3283, ECF No. 19249**]
- B. Corrected Joinder of the Lawful Constitutional Debt Coalition to the Memorandum of Law of the Oversight Board in Support of Its Request for Rulings Regarding Act 53-2021 [**Case No. 17-3283, ECF No. 19252**]

Related Documents:

- A. Order (I) Approving Form of Notice of Rulings the Oversight Board Requests at Confirmation Hearing Regarding Act 53-2021 and (II) Scheduling Objection Deadline [**Case No. 17-3283, ECF No. 19017**]
- B. Amended Order Directing Supplemental Briefing and Oral Argument on Issues Pertaining to the Confirmation Hearing [**Case No. 17-3283, ECF No. 19179**]

Estimated Time Required: 120 minutes.

Order and Number of Speakers: The names of counsel who intend to speak on this matter and time allocations for each party are listed below:

- A. Supporting Parties:
 - 1. **FOMB**: Martin J. Bienenstock and Timothy W. Mungovan, 35 minutes.
 - 2. **LCDC**: Susheel Kirpalani, 10 minutes.
 - B. Objecting Parties:
 - 1. **FMPR, EDUCAMOS, UNETE**: Jessica Méndez-Colberg, 15 minutes.
 - 2. **AMPR**: José Luis Barrios-Ramos, 15 minutes.
 - 3. **APJ**: David C. Indiano, 15 minutes.
 - 4. **AJJPR**: Enrique J. Mendoza Méndez, 15 minutes.
 - C. Supporting Parties:
 - 1. **FOMB**: Martin J. Bienenstock and Timothy W. Mungovan, 15 minutes.
2. **Third Revised Proposed Order Confirming the Plan.** Order and Judgment Confirming Modified Eighth Amended Title III Joint Plan of Adjustment of the Commonwealth of

Puerto Rico, et al. (the “Third Revised Proposed Order”) [**Case No. 17-3283, ECF No. 19188**]

Description: The parties will address objections to the Third Revised Proposed Order.

Objection Deadline: November 15, 2021 at 7:00 p.m. (Atlantic Standard Time).

Responses:

- A. Objection of International Union, UAW and Service Employees International Union to Third Revised Confirmation Order [**Case No. 17-3283, ECF No. 19204**]
- B. PFZ’s Objection to Third Revised Proposed Confirmation Order [**Case No. 17-3283, ECF No. 19212**]
- C. Qualified Objection to Proposed Confirmation Order, filed by Finca Matilde, Inc. [**Case No. 17-3283, ECF No. 19214**]
- D. Reservation of Rights of Assured Guaranty Corp. and Assured Guaranty Municipal Corp. with Respect to Revised Proposed Confirmation Order and Judgment (ECF No. 19188) [**Case No. 17-3283, ECF No. 19217**]
- E. Objection to Revised Proposed Order and Judgment Confirming Modified Eighth Amended Title III Joint Plan of Adjustment of the Commonwealth of Puerto Rico (This Objection Is Filed by Individual GO and PBA Bondholder Peter C. Hein) [**Case No. 17-3283, ECF No. 19218**]
- F. Credit Unions’ Joint Objection to the Revised Eighth Amended Title III Joint Plan of Adjustment and to the Revised Proposed Order and Judgment Confirming the Modified Eighth Amended Title III Joint Plan of Adjustment [**Case No. 17-3283, ECF No. 19221**]
- G. Reservation of Rights of Official Committee of Unsecured Creditors Regarding Revised Proposed Order and Judgment Confirming Modified Eighth Amended Title III Joint Plan of Adjustment of Commonwealth of Puerto Rico, *et al.* [**Case No. 17-3283, ECF No. 19225**]
- H. Demetrio Amador Inc./Demetrio Amador Roberts (“Amador”) Objection to the Revised Proposed Order and Judgment Confirming Modified Eighth Amended Title III Joint Plan Filed at Docket 19188 [**Case No. 17-3283, ECF No. 19228**]²
- I. Reservation of Rights of the Official Committee of Retired Employees of the Commonwealth of Puerto Rico Regarding the Revised Proposed Order and Judgment Confirming Modified Eighth Amended Title III Joint Plan of Adjustment of the Commonwealth of Puerto Rico, et al. [**Case No. 17-3283, ECF No. 19248**]

² The Oversight Board reached out to every objecting party in advance of filing this Agenda, and did not receive a response from Amador, therefore no time has been allocated to Amador.

Related Documents:

- A. Order and Judgment Confirming Modified Eighth Amended Title III Joint Plan of Adjustment of the Commonwealth of Puerto Rico, et al. (the “Initial Proposed Order”) [Case No. 17-3283, ECF No. 18447]
- B. Order and Judgment Confirming Modified Eighth Amended Title III Joint Plan of Adjustment of the Commonwealth of Puerto Rico, et al. (the “Revised Proposed Order”) [Case No. 17-3283, ECF No. 19061]
- C. Order and Judgment Confirming Modified Eighth Amended Title III Joint Plan of Adjustment of the Commonwealth of Puerto Rico, et al. (the “Second Revised Proposed Order”) [Case No. 17-3283, ECF No. 19118]
- D. Amended Order Directing Supplemental Briefing and Oral Argument on Issues Pertaining to the Confirmation Hearing [Case No. 17-3283, ECF No. 19179]

Estimated Time Required: 100 minutes.

Order and Number of Speakers: The names of counsel who intend to speak on this matter and time allocations for each party are listed below:

A. Supporting Parties:

- 1. **FOMB:** Brian S. Rosen, 30 minutes.

B. Objecting Parties:

- 1. **Peter C. Hein (*pro se*):** 20 minutes.
- 2. **UAW/ SEIU:** Peter D. DeChiara, 10 minutes.
- 3. **Credit Unions:** Enrique Almeida, 4 minutes.
- 4. **Retiree Committee:** Robert Gordon, 5 minutes.
- 5. **UCC:** Luc Despins, 3 minutes.
- 6. **Assured:** William Natbony, 5 minutes.
- 7. **PFZ:** David Carrión Baralt, 3 minutes.
- 8. **Finca Matilde:** Eduardo Capdevila, 10 minutes.

C. Supporting Parties:

- 1. **FOMB:** Brian S. Rosen, 10 minutes.

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Dated: November 16, 2021
San Juan, Puerto Rico

Respectfully submitted,

/s/ Martin J. Bienenstock

Martin J. Bienenstock

Brian S. Rosen

Paul V. Possinger

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(Admission *Pro Hac Vice*)

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/s/ Hermann D. Bauer

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Debtors*

Exhibit A

**Amended Order Directing Supplemental Briefing and Oral Argument on Issues Pertaining
to the Confirmation Hearing**

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

In re:

THE FINANCIAL OVERSIGHT AND
MANAGEMENT BOARD FOR PUERTO RICO,

as representative of

THE COMMONWEALTH OF PUERTO RICO et al.,
Debtors.¹

PROMESA
Title III

No. 17 BK 3283-LTS

(Jointly Administered)

AMENDED ORDER DIRECTING SUPPLEMENTAL BRIEFING AND ORAL
ARGUMENT ON ISSUES PERTAINING TO THE CONFIRMATION HEARING

The Court commenced the hearing in connection with the request of the Financial Oversight and Management Board for Puerto Rico (the “Oversight Board”) for approval of the *Modified Eighth Amended Title III Joint Plan of Adjustment of the Commonwealth of Puerto Rico, et al.* (Docket Entry No. 19117, as may be supplemented or amended, the “Plan”) on November 8, 2021 (the “Confirmation Hearing”). In order that the parties have opportunities to

¹ The Debtors in these Title III Cases, along with each Debtor’s respective Title III case number and the last four (4) digits of each Debtor’s federal tax identification number, as applicable, are the (i) Commonwealth of Puerto Rico (the “Commonwealth”) (Bankruptcy Case No. 17-BK-3283-LTS) (Last Four Digits of Federal Tax ID: 3481); (ii) Puerto Rico Sales Tax Financing Corporation (“COFINA”) (Bankruptcy Case No. 17-BK-3284-LTS) (Last Four Digits of Federal Tax ID: 8474); (iii) Puerto Rico Highways and Transportation Authority (“HTA”) (Bankruptcy Case No. 17-BK-3567-LTS) (Last Four Digits of Federal Tax ID: 3808); (iv) Employees Retirement System of the Government of the Commonwealth of Puerto Rico (“ERS”) (Bankruptcy Case No. 17-BK-3566-LTS) (Last Four Digits of Federal Tax ID: 9686); (v) Puerto Rico Electric Power Authority (“PREPA”) (Bankruptcy Case No. 17-BK-4780-LTS) (Last Four Digits of Federal Tax ID: 3747); and (vi) Puerto Rico Public Buildings Authority (“PBA”) (Bankruptcy Case No. 19-BK-5523-LTS) (Last Four Digits of Federal Tax ID: 3801) (Title III case numbers are listed as Bankruptcy Case numbers due to software limitations).

address further specific legal issues of concern to the Court, and to ensure that certain pleadings are filed at times and in forms helpful to the Court, it is hereby ORDERED that:

1. The Court will hear argument on the following legal issues on **Monday, November 15, 2021**, beginning at **9:30 a.m. (Atlantic Standard Time)**, in accordance with the following time allocations:
 - a. Argument will be heard on the issue of preemption for a total of **40 minutes**, split evenly between the supporters of and objectors to the Plan. The parties are directed to address the analytical basis and anticipated operation and scope of preemption arising from section 89.3 and Exhibit K of the Plan. The Oversight Board is also directed to address the representation in the Jaresko Declaration that “a comprehensive list of statutes, which the Oversight Board has identified as inconsistent with, and preempted by, PROMESA will be submitted in advance of the confirmation hearing.”
 - b. Argument will be heard on the issue of the deemed rejection of the Commonwealth’s contractual obligations to accrue pension benefits for a total of **30 minutes**, split evenly between the supporters of and objectors to the Plan. The parties are directed to address the extent to which such rejection supports a rejection damages claim for the denial of future accruals and the implications of such a claim for feasibility.
 - c. Argument will be heard on certain issues related to the Takings Clause of the U.S. Constitution for a total of **2 hours**, split evenly between the supporters of and objectors to the Plan. Specifically, the parties are directed to address the following issues:
 - i. Whether and to what extent the exercise of discretion by the Court under 11 U.S.C. § 944(c)(1) to exempt some or all takings claims from discharge would render the Plan unfeasible.
 - ii. Arguments concerning the meaning of “just compensation” in the context of bankruptcy law.
 - iii. Arguments concerning the Oversight Board’s proposed distinction between takings claims that are secured and those that are unsecured.
 - iv. Whether the reduction of a Takings Clause claim to a judgment or a settlement agreement affects whether it is still subject to the Takings Clause.
 - v. How the three factors identified in Penn Central Transportation v. City of New York, 438 U.S. 104, 124 (1978), apply to takings claims that are not per se takings claims.

- d. Argument will be heard on the issue of third-party release, exculpation, and injunction provisions for a total of **20 minutes**, split evenly between the supporters of and objectors to the Plan. The parties are directed to address any remaining objections concerning release, exculpation, and injunction provisions and/or to report concerning the resolution of such issues.
 - e. Argument will be heard on solicitation issues for a total of **45 minutes**, split evenly between the supporters of and objectors to the Plan. Specifically, the parties shall address (i) whether the votes of Retail Investors were improperly solicited in violation of Section 1125(b) of the Bankruptcy Code and (ii) whether designation of any votes is required pursuant to Section 1126(e) of the Bankruptcy Code.
 - f. Argument will be heard on the objection filed by the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (“UAW”) and Service Employees International Union (“SEIU”) (Docket Entry No. 19162 in Case No. 17-3283) in response to certain provisions contained in the Debtors’ *Proposed Order and Judgment Confirming Modified Eighth Amended Title III Joint Plan of Adjustment of the Commonwealth of Puerto Rico, et al.* (Docket Entry No. 19118 in Case No. 17-3283, at Exhibit A), for a total of **45 minutes**, split evenly among the Supporters, UAW, and SEIU.
2. The Oversight Board shall file a memorandum of law in support of the Oversight Board’s request for rulings regarding Act 53-2021 by **Monday November 15, 2021, at 11:59 p.m. (Atlantic Standard Time)**. The memorandum of law shall include responses to objections filed in opposition to the Debtors’ *Notice of (I) Rulings the Oversight Board Requests at Confirmation Hearing Regarding Act 53-2021 and (II) Deadline for Objections* (Docket Entry No. 19002 in Case No. 17-3283).
 3. The Oversight Board shall file an amended proposed order and judgment confirming the Plan (the “Revised Proposed Order”) by **Friday, November 12, 2021, at 11:59 p.m. (Atlantic Standard Time)**. Parties shall file objections (if any) to the Revised Proposed Order by **Monday, November 15, 2021, at 7:00 p.m. (Atlantic Standard Time)**.
 4. The Court will hear argument on the following legal issues on **Wednesday, November 17, 2021**, beginning at **9:30 a.m. (Atlantic Standard Time)**, in accordance with the following time allocations:
 - a. Argument will be heard on the Oversight Board’s request for rulings regarding Act 53-2021 for a total of **2 hours**, split evenly between the supporters of and objectors to the ruling request.

- b. Argument will be heard on objections to the Revised Proposed Order for a total of **2 hours**, split evenly between the supporters and objectors to the order.
5. The Oversight Board shall file amended proposed findings of fact and conclusions of law in connection with confirmation of the Plan no later than **48 hours following the conclusion of the Confirmation Hearing**. Any objections to such amended proposed findings of fact and conclusions shall be filed by **11:59 p.m. (Atlantic Standard Time) of the third business day** after the amended proposed findings and conclusions are filed.
6. With respect to the oral arguments, the parties shall meet and confer in advance regarding time allocations, and the Oversight Board shall file, by 2:00 p.m. on the day preceding the oral argument, an agenda identifying the anticipated speakers and their respective time allocations.
7. Concerning closing arguments, the parties are directed to promptly meet and confer to coordinate compliance with paragraph 8 of the *Second Amended Order Regarding Procedures for Hearing on Confirmation of Plan of Adjustment* (Docket Entry No. 19012-1 in Case No. 17-3283).

SO ORDERED.

Dated: November 12, 2021

/s/ Laura Taylor Swain
LAURA TAYLOR SWAIN
United States District Judge